

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-387

In re Applications of

ROXANNE GIVENS File No. BPH-871202MC

NANCY JEAN PETERSON File No. BPH-871203MF

SOUTHWEST File No. BPH-871203MH
SUBURBAN
BROADCASTING, INC.

CRIMIEL File No. BPH-871203MN
COMMUNICATIONS
ASSOCIATES
LIMITED PARTNERSHIP

JH BROADCAST File No. BPH-871203NF
LIMITED
PARTNERSHIP

ANNE M. COUNIHAN File No. BPH-871203NQ

COVE File No. BPH-871203NT
COMMUNICATIONS, INC.

For Construction Permit for
New FM Station, Channel 289A,
Eden Prairie, Minnesota

MEMORANDUM OPINION AND ORDER

Adopted: January 8, 1992; Released: January 17, 1992

By the Review Board: MARINO (Chairman),
BLUMENTHAL, and ESBENSEN.

1. Before the Review Board is a "Motion For Stay And Appeal From Presiding Officer's Ruling Terminating The Proceeding," filed November 25, 1991 by N. Walter Goins (Goins).¹ Goins seeks a stay of the effective dates of two companion orders issued by Administrative Law Judge Richard L. Sippel (ALJ), which, in conjunction, approved a settlement agreement in the above-captioned proceeding; granted the application of Southwest Suburban Broadcasting, Inc. (Southwest Suburban), as amended, for the new FM facility at Eden Prairie, Minnesota; and terminated the proceeding. *Memorandum Opinion and Order*, FCC 91M-3151; *Order*, FCC 91M-3152, both released on October 25, 1991. Goins filed for the instant facility, but his application was dismissed by the ALJ after the latter granted a motion for summary decision adverse to Goins on a previously added financial issue.² In support of his motion, Goins asserts that he has not received "official notice" of the ALJ's action. Presumably, Goins'

legal objective is "to prevent the irreparable loss of [his] asserted comparative hearing rights in the face of an unstayed and administratively final grant" to Southwest Suburban. *Meridian Communications*, 2 FCC Rcd 5904 (Rev. Bd. 1987).

2. We will deny the motion for stay. The mere fact that Goins is a former party to this proceeding is not a recognized legal basis for requesting review or a stay of the settlement agreement. See *Warren Price Communications, Inc.*, 6 FCC Rcd 4424 (1991); *Meridian Communications, supra*. As we noted in *Meridian*, 2 FCC Rcd at 5904 (citations omitted):

[I]t is well-settled that former and potential applicants, without more, lack standing to intervene in hearing proceedings. This is particularly true where, as here, the proposed intervenor does not wish to challenge or participate in the proceedings presently pending before the forum (a settlement agreement), but rather is trying to vindicate a different interest pending elsewhere (reinstatement of its application by a different authority).

In any event, Goins' prophylactic measures in requesting the stay are unnecessary because, as a matter of law, the grant to Southwest Suburban cannot become final until Goins has exhausted all of the legal remedies relating to his own dismissal from this proceeding.³

3. ACCORDINGLY, IT IS ORDERED, That the Motion For Stay And Appeal From Presiding Officer's Ruling Terminating the Proceeding, filed November 25, 1991, by N. Walter Goins IS DENIED.⁴

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

¹ The pleading was informally referred to the Board by the Commission's Office of General Counsel on December 2, 1991.

² *Memorandum Opinion and Order*, FCC 90M-1921, released July 3, 1990; *appeal denied*, 5 FCC Rcd 5371 (Rev. Bd. 1990), *recon. dismissed*, 5 FCC Rcd 5905 (1990), *modified*, 5 FCC Rcd 7010 (Rev. Bd. 1990), *review denied*, 6 FCC Rcd 2961 (1991), *recon. denied*, 6 FCC Rcd 6909 (1991).

³ Goins improperly includes within his Motion a request for a stay of the effective date of the Commission's *Memorandum Opinion and Order*, 6 FCC Rcd 6909, denying Goins' petition for reconsideration of his dismissal from this proceeding, as well as a reiteration of arguments relating to a petition for special relief filed with the Mass Media Bureau. See Section 1.44(a) of the Commission's Rules, 47 CFR § 1.44(a). That rule prohibits the combination of requests for action by different officials in a single pleading.

⁴ Prepublication copies of the document will be mailed to the remaining parties and to N. Walter Goins at the address indicated in his Motion: 931 Lakeshore Drive, Big Lake, Minnesota 55309-9588.

Before the
Federal Communications Commission
Washington DC 20554

MM Docket No. 85-36

In the Matter of

Review of Technical and Operational
Requirements: Part 74-E Aural
Broadcast STL and ICR Stations; and
Part 74-F TV Low Power Auxiliary
Stations.

ORDER
(Proceeding Terminated)

Adopted: December 31, 1991; Released: January 15, 1992

By the Commission:

1. The *Further Notice of Proposed Rule Making*¹ in this proceeding proposed to allow portable broadcast auxiliary TV pickup stations to use certain vacant channels in the UHF-TV spectrum on a secondary, non-interference basis for transmission of program material over limited distances. In particular, the *Further Notice* proposal would have permitted field crews to use vacant UHF-TV channels for Electronic News Gathering transmissions from a camera to a microwave vehicle for relay to the studio. Currently, such wireless camera operations are limited to microwave bands above 2 GHz. The proposal to permit wireless camera use on vacant UHF-TV channels in lieu of operation in the referenced microwave bands was expected to provide relief from interference encountered by receivers operating in close proximity to transmitters in the same microwave bands. Eligibility for the proposed uses was to be limited to TV broadcast licensees, TV networks and cable television entities² in order to limit such use to broadcast or broadcast related entities consistent with the purpose of this Broadcast Auxiliary Service.

2. Several months prior to the *Further Notice*, we greatly expanded the number of channels available to Low Power Auxiliary Stations (LPAS).³ See *First Report and Order* in MM Docket No. 86-12, 2 FCC Rcd 345 (1987). However, during that time we did not authorize any equipment

suitable for use on the newly available channels. In the *Further Notice*, we noted that there was no apparent method of coordinating LPAS operations and wireless camera operations, and expressed concern about potential interference if these fundamentally different devices were to be operated on the same channels. The *Further Notice* accordingly imposed a freeze on continued licensing of LPAS operation between 530 MHz and 806 MHz in the UHF-TV band pending the resolution of the issues involving wireless camera use of the same band that were raised in this proceeding.⁴

3. The comments filed in response to the *Further Notice* expressed either no support or only limited support for the use of wireless cameras operating in the UHF-TV spectrum. In particular, broadcast interests expressed satisfaction with current wireless cameras that operate in the microwave bands above 2 GHz and questioned the demand for more limited bandwidth equipment that would operate in UHF-TV channels. Although police departments and motion picture companies filed comments in favor of the proposal stated in the *Further Notice*, their support was conditioned on their being permitted to operate wireless cameras in the UHF-TV band. Because of the transient and intermittent nature of wireless camera operations, close cooperation among users is essential. However, the lack of a natural coordination facility and scarce enforcement resources leads us to conclude that granting access to the UHF television channels to police departments and motion picture companies should not be permitted. Further, the record does not establish that adoption of the proposed wireless camera use would be in the public interest. Accordingly, this proceeding will be terminated without prejudice.

4. In view of the preceding decision, we will also terminate the freeze on the authorization of wireless microphones on UHF-TV spectrum above Channel 23 (i.e., above 530 MHz). Pursuant to Section 74.803(b) of our Rules, wireless microphones are authorized and operated strictly on a secondary basis to other primary (principally broadcast) services. In larger metropolitan areas, VHF-TV channels (which also may be used by wireless microphones) are used intensively for broadcasting and lower UHF channels often are shared with private land mobile services.⁵ Available channels for wireless microphone use are further restricted by the co-channel spacing requirements of Section 74.802(b) of the Rules, particularly in larger urbanized areas.⁶ This has resulted in reports of congestion which would be alleviated by making the upper UHF-TV channels available again for wireless microphone operation.⁷ Thus, the public will benefit by our terminating the freeze.

¹ See *Further Notice of Proposed Rule Making*, 2 FCC Rcd 3129 (1987).

² *Ibid*, paragraph 12.

³ The expression "Low Power Auxiliary Stations" (LPAS) usually denotes low power "wireless microphones" which are used to convey audio signals over short distances without using wires or cables. However, other permissible (but much less frequently used) devices include low power stations that are used for cue and control communications or to synchronize TV camera signals.

⁴ See *Further Notice*, paragraph 15.

⁵ See *First Report and Order* in Docket 18261, 23 FCC 2d 325 (1970).

⁶ For example, LPAS licensees authorized in the frequency band 174 to 216 MHz in Zone 1, which includes most of the northeast United States, may not operate within 97 kilometers (60 miles) of a co-channel TV broadcast station.

⁷ On January 14, 1991, a Petition for Further Review, Analysis and Consideration was filed by Vega -- a Mark IV Company that manufactures wireless microphones. Vega claims that it is nearly impossible for wireless microphones to operate in major markets on most of the UHF channels that are not covered by the freeze. In view of our decision to terminate the freeze, the Vega petition will be dismissed as moot.

5. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, IT IS ORDERED THAT this proceeding IS TERMINATED without prejudice, THAT the freeze on wireless microphone and other Low Power Auxiliary Service operation above 530 MHz IS TERMINATED, and THAT the Vega January 14, 1991 Petition for Further Review, Analysis and Consideration IS DISMISSED.

6. For further information contact Hank VanDeursen at (202) 632-9660.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary